

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

MICHAEL AND CAROL CONOVER)	
)	
COMPLAINANTS)	
)	
VS.)	CASE NO. 90-232
)	
INTER-COUNTY RURAL ELECTRIC COOPERATIVE)	
CORPORATION AND KENTUCKY UTILITIES COMPANY)	
)	
DEFENDANTS)	

O R D E R

On August 6, 1990, Michael and Carol Conover ("Conovers") filed a Petition, pursuant to KRS 278.018(1), requesting a modification of the certified electric territorial boundary affecting 95 of 300 acres owned by the Conovers near the southwest city limits of the city of Harrodsburg, Kentucky. The Conovers state that they are in the process of developing a commercial park in the eastern half of the 95 acres and plan to devote the western half to residential use. Currently, there has been developed two commercial areas, designated Commerce Park I, located in the northeast corner of the tract, and Commerce Park II, located in the southeast corner of the tract. A map of the Conovers' property, attached to the Conovers' Petition as Exhibit B, indicates that approximately 75 percent of the 95 acres is located within Inter-County Rural Electric Cooperative Corporation's

("Inter-County") service territory, with the remainder located within Kentucky Utilities Company's ("KU") service territory.

The Conovers request that the electric territorial boundary be modified to allow KU to serve their 95 acre development, except for Commerce Park II which is located within Inter-County's service territory. Commerce Park II consists of 11 lots, 4 of which have electric-consuming facilities being served by Inter-County. Commerce Park I, on the other hand, lies totally within KU's service territory and would not be affected by the boundary change request. The Petition states that the boundary change is needed because KU has at least two existing power lines in closer proximity to two proposed electric-consuming facilities, a restaurant on the eastern border of the 95 acre tract and a sewer pump station on the northwest corner. The Conovers claim that the closer proximity of KU's power lines will result in less cost for extending electric lines and eliminate the need for lengthy easements across commercial property. The Petition also notes that KU's monthly electric rates are lower than Inter-County's rates.

The Commission served the Conovers' Petition on Inter-County and KU and ordered each of the utilities to respond to the allegations set forth therein. Inter-County's response argues that since the Conovers' Petition fails to disclose the existence of any electric-consuming facility which would be located within two adjacent certified territories, there is no basis to grant the relief requested and the Complaint should be dismissed. Inter-County further states that it is ready, willing, and able to

provide electric service to all of the acreage located within its territorial boundary but that no formal request for service has been received. KU's response similarly argues that the Conovers' Petition has failed to allege facts sufficient to justify a change in the territorial boundary, and KU also requests that the Petition be dismissed.

In determining whether the Conovers' Petition should be dismissed without a hearing pursuant to KRS 278.260(2), consideration must be given to whether a hearing is necessary in the public interest or for the protection of substantial rights. For the purpose of this determination, the Commission will construe the Petition in a light most favorable to the Conovers and accept as true the Conovers' allegations of fact.

The Conovers' Petition seeks relief from the existing territorial boundary pursuant to the last sentence of KRS 278.018(1) and the decision of the Kentucky Court of Appeals in Owen County RECC v. Public Service Comm'n, Ky. App., 689 S.W.2d 599 (1985). The last sentence of KRS 278.018(1) provides that,

In the event that a new electric-consuming facility should locate in two or more adjacent certified territories, the commission shall determine which retail electric supplier shall serve said facility based on criteria in KRS 278.017(3).

In the Owen County RECC case, the Court affirmed the Commission's finding that a 77 acre industrial park was a new electric-consuming facility which would be located in two adjacent certified territories, requiring a determination of the electric supplier based on the criteria set forth in KRS 278.017(3). Central to the Court's decision was the finding that,

The plot plan of the industrial park reveals that ULH&P [Union Light, Heat and Power] is to establish its service entrance, metering and transforming equipment for the park on Parcel No. 2 approximately 1,000 feet from the park entrance on U.S. Highway 27.

Owen County RECC, at 602.

The facts set forth in the Conovers' Petition clearly demonstrate that their 95 acre tract is dissimilar to the industrial park at issue in Owen County RECC and should not be classified as a new electric-consuming facility.

First, the 95 acre tract is not being developed as a single project for a common use. Rather, it is being developed in phases and sections over time, with approximately half dedicated to commercial use and the remainder dedicated to residential use. As stated in the Petition, two non-adjacent commercial parcels, Commerce Park I and II, are already developed and being served by different retail electric suppliers. Second, there will not be a common point for electric service entrance, metering, and transforming equipment. In fact, the Conovers' claim of lower cost for extending electric lines from KU is based solely on the existence of multiple electric-consuming facilities (i.e. a restaurant and a sewer pump station) each located closer to a different KU power line. Extending several KU power lines to serve individual facilities will result in multiple, not common, electric service entrances and metering. Third, none of the electric-consuming facilities discussed in the Conovers' Petition are even alleged to be located in two adjacent certified territories.

Having construed the Conovers' Petition in a light most favorable to them and accepted as true their allegations of fact, the Commission finds that the Conovers' 95 acre tract is not properly classified as a new electric-consuming facility but, rather, each individual building constructed or to be constructed will be a new electric-consuming facility. Consequently, this case does not fall within the ambit of the last sentence of KRS 278.018(1) relating to an electric-consuming facility located in two or more adjacent certified territories. This case is controlled by the general provision of that statute, which states that:

Except as otherwise provided herein, each retail electric supplier shall have the exclusive right to furnish retail electric service to all electric-consuming facilities located within its certified territory, and shall not furnish, make available, render or extend its retail electric service to a consumer for use in electric-consuming facilities located within the certified territory of another retail electric supplier. . . .

KRS 278.018(1). Under these circumstances, a hearing is not necessary in the public interest or for the protection of substantial rights. The Petition does not justify the boundary change requested by the Conovers, and Inter-County and KU should continue to provide service to those facilities located within their respective service territories.

The Conovers also filed a motion requesting the Commission to: strike that portion of Inter-County's response which refers to an easement on the Conovers' property; impose sanctions on Inter-County for allegedly deceiving the Commission regarding such easement; and issue an Interim Order allowing KU to serve on an

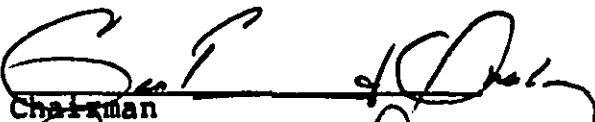
interim basis a new restaurant facility located in Inter-County's service territory. The issue of utility easements is not relevant to an application of the certified electric territory statutes, KRS 278.016-278.018. Consequently, the Commission has given no consideration to easements in reaching the findings set forth herein. The Conovers' request for KU to provide interim service to a new restaurant facility located wholly within Inter-County's boundary further confirms that the 95 acre tract itself is not a new electric-consuming facility. The motion will be denied.

IT IS THEREFORE ORDERED that:

1. The Conovers' Petition be and it hereby is dismissed.
2. The Conovers' motion to strike, to impose sanctions, and to grant interim relief be and it hereby is denied.

Done at Frankfort, Kentucky, this 6th day of February, 1991.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director